HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Petition No.8440 of 2007

Between:

The Divisional Railway Manager, Secunderabad Division, S.C. Railways, Secunderabad and others.

… Petitioners

And

N.P. Shinde and others

… Respondents

:: ORDER::

Counsel for the Petitioners: Smt. Pushpinder Kaur

April 24, 2007

Per G.S. Singhvi, CJ

Feeling aggrieved by order dated 25-1-2007 vide which the Central Administrative Tribunal, Hyderabad Bench (for short, 'the Tribunal') allowed the application filed by the respondents in terms of the order passed in O.A.No.748 of 2004 and batch, the petitioners have filed this petition under Article 226 of the Constitution.

The respondents are holding the posts of TTEs under the South Central Railway. They have lien in Hyderabad Division but they are presently working in Nanded Division. The Hyderabad Division was bifurcated with effect from 1-4-2003 and a new division was created at Nanded. At that stage, the respondents gave options for repatriation to Hyderabad Division, but the same were not acted upon by the administration, though their names were shown in the seniority list of Hyderabad Division.

In the year 2004, the administration of South Central Railway initiated process for promotion of TCs. to the posts of TTEs. in Hyderabad Division. Some of the TTEs, who were posted at Nanded prior to the bifurcation of Hyderabad Division, filed applications under Section 19 of the Administrative Tribunals Act, 1985 (for short, 'the Act') and prayed that the railway administration be directed to complete the process of repatriation before undertaking exercise for promotion of their juniors. The same were registered as O.A.No.748 of 2004 and batch. By an order dated 16.12.2004, the Tribunal disposed of the applications and directed the non-applicants to transfer the seniormost among the optees from Nanded Division to Hyderabad Division.

The respondents also filed application under Section 19 of the Act and prayed for their repatriation to Hyderabad Division in accordance with the direction given by the Tribunal in O.A. No. 748 of 2004 and batch. They pleaded that even though they had opted for repatriation to the parent division, the non-applicants had not taken

action in that regard and, at the same time, juniors in the cadre of TCs were being promoted as TTEs in Hyderabad Division.

The non-applicants (the petitioners herein) did not file counter-affidavit. Not only this, the counsel appearing on their behalf fairly admitted that the administration has already implemented order dated 16-12-2004. He, however, tried to justify non-repatriation of the applicants (the respondents herein) to Hyderabad Division by contending that there was acute paucity of TTEs in Nanded Division.

The Tribunal referred to the order passed in O.A.No.748 of 2004 and batch, took cognizance of the statement made by the counsel for the non-applicants (the petitioners herein) and disposed of the application of the respondents by directing the petitioners herein to complete the repatriation/transfers within three months. Paragraphs 7 and 8 of the order, which is the subject matter of challenge in this petition, read as under:

> "7. The respondents have not filed their reply statement. However, Sri MC Jacob, learned standing counsel for respondent Railways admitted that the Railways have implemented the orders given by this Tribunal in respect of TTIs and CTIs and have tried to take recruitment action with regard to the TTEs in Nanded Division so that the applicants in the present OA could be repatriated to Hyderabad Division. The Railway Recruitment Board has not been able to sufficient number of candidates. It has not been possible to transfer the TTEs who have opted for Hyderabad Division from Nanded Division for want of suitable officials to relieve them. As the respondents have no other ground for not considering the requests of the applicants for posting them to Hyderabad Division, though objection/reply statement from the respondents is not yet filed, we shall dispose of the OA by following orders passed in OAs 748/04 & batch.
>
> 8. It is well settled in law that similarly situated officials are entitled to similar treatment with regard to court orders as per the principle enunciated in the case if Inder Pal Yadav & others v. UOI & others (1985 (2) SLR 248), wherein the

Honourable Apex Court observed as follows:

> "Therefore, those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment, if not by anyone else at the hands of this court."

It should also be noted that the orders of this Tribunal in OA 748/04 & batch are general orders applicable to all cadres and the orders have reached finality. Therefore, no further order is necessary. The respondents are given three months time from today to complete the repatriations/ transfers."

Smt. Pushpinder Kaur argued that the respondents cannot claim their repatriation to Hyderabad Division as of right and the railway administration did not commit any illegality by refusing to accept their options because there is acute scarcity of TTEs in Nanded Division.

We have considered the submission of the learned counsel but have not felt impressed. In O.A.No.748 of 2004 and batch decided on 16-12-2004, the Tribunal considered the question whether non-repatriation of the senior employees from the newly formed Nanded Division to their parent division i.e. the Hyderabad Division was legally correct and answered the same in negative. The Tribunal held that the railway administration cannot postpone the transfer of the senior employees to Hyderabad Division and, at the same time, promote persons from the next below category. The operative portion of order dated 16-12-2004 passed in O.A.No.748 of 2004 and batch reads as under:

i) Since the Railway Board has stipulated that the promotions to the respective categories of staff would be on "as is where is basis" and the whole exercise having been stipulated to be completed within a period of six months, the respondents are directed to complete the exercise as stipulated above and "as is where is

basis".

The respondents are further directed to consider and give effect to the cases of transfer of the seniormost among the optees from Nanded Division to come over to their parent division, where their lien has been maintained, after six months on priority basis and replace them either by those who have opted to be in Nanded Division or those who are juniormost in each category of posts except in case where exemptions have been allowed like distinguished Sportsmen, Physically Handicapped people, Women etc. in consultation with the Unions by the Railway Board themselves. The entire exercise as directed above, shall be completed within a period of three months. No further time would be granted beyond this period for carrying out the above exercise after six months.

ii) The interim order granted on 8-7-2004 in OA No.748/2004 on 22-7-2004 in OA Nos.795 & 796/2004, on 3-8-2004 in OA NIo.826/2004 and on 30-8-2004 in OA No.928/2004, imposing an embargo on promotion and for maintenance of status quo are hereby vacated."

It is neither the pleaded case of the petitioners nor Smt.Pushpinder Kaur argued that the respondents had not opted for repatriation to Hyderabad Division or that the members of the cadre of TCs are not being promoted to the post of TTEs in Hyderabad Division. She also conceded that order dated 16.12.2004 passed by the Tribunal has been subsequently implemented.

In view of the above, we have no hesitation to hold that failure of the petitioners to repatriate the respondents to their parent division i.e. Hyderabad Division is wholly arbitrary, unjust and violative of their fundamental right to equality in the matter of employment guaranteed under Article 16 of the Constitution and the Tribunal did not commit any illegality by directing the petitioners to implement order dated 16-12-2004 passed in O.A.No.748 of 2004 and batch in its entirety.

In the result, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP No.10831 of 2007 filed by the petitioners for interim relief is also dismissed.

G.S. SINGHVI, CJ

April 24, 2007

C.V. NAGARJUNA REDDY, J

svs